

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF NEW YORK, *et al.*,

Plaintiffs

v.

MICROSOFT CORPORATION,

Defendant.

Civil Action No. 98-1233 (CKK)

ORDER

Presently pending before the Court is a motion filed collectively by the plaintiffs in *Coordination Proceedings Special Title (Rule 1550(b)), Microsoft Cases, J.C.C.P. No. 4106* (“California Action”). Plaintiffs in the California Action (“California plaintiffs”), who are not parties to the above captioned case, seek leave of the Court to intervene in order to request modification of the Protective Order in this case. Defendant Microsoft filed a responsive memorandum which, *inter alia*, raises a concern that the California plaintiffs are seeking access to “*all* confidential third-party materials” produced in this case. Microsoft Resp. at 2. Microsoft alleges, and at present, the Court has no evidence to the contrary, that the California plaintiffs’ motion does not provide notice to potentially interested third-parties and does not afford them an opportunity to be heard on the issues raised in the California plaintiffs’ motion. *Id.* In this regard, Microsoft aptly points out that “[t]hird parties that have produced Confidential documents or testimony in the course of the Remedies proceeding have done so in direct reliance on this Court’s Protective Order.” *Id.*

At this stage in the proceeding, it would squander judicial resources to establish a procedure which effectively requires the potentially interested third-parties to communicate their concerns to the California plaintiffs via filings in this Court. To avoid such a situation, the Court will suspend the briefing schedule on the pending motion in order to require the California plaintiffs to provide notice to any potentially interested third-parties and engage in discussions with these third-parties in an effort to resolve any disagreement relating to access to third-party documents. If disagreements persist after this period, the California plaintiffs shall so notify the Court in their reply memorandum, and thereafter, the Court will afford appropriate third-parties an opportunity to be heard on any outstanding issues.

Because the California plaintiffs' request mirrors that made by the MDL plaintiffs, *see State of New York, et al. v. Microsoft Corp.*, No. 98-1233 (July 26, 2002) (order requiring MDL plaintiffs to confer with potentially interested third-parties), the Court suggests that the California plaintiffs coordinate any discussions described above with the discussions of the MDL plaintiffs and potentially interested third-parties. The Court further notes that any potentially interested third-parties should first engage in discussions with the MDL plaintiffs and the California plaintiffs *prior* to filing a formal objection to either non-party's motion. In this regard, the Court notes that there is no need for potentially interested third-parties to file with the Court in order to preserve their objections at this point; any such filing would be premature.

Accordingly, it is this 8th day of August, 2002, hereby

ORDERED that the non-party California plaintiffs shall endeavor to contact any third-parties who disclosed Confidential and/or Highly Confidential information in conjunction with the Remedies Phase of the above-captioned case; and it is further

ORDERED that the non-party California plaintiffs shall engage in discussions with such third-parties in an effort to reach an agreement as to the terms of any disclosure to the California plaintiffs of information which is covered by the Protective Order entered in the above-captioned case; and it is further

ORDERED that the non-party California plaintiffs shall file their reply to Microsoft's response not later than August 30, 2002. Such reply shall include a report on the status of negotiations with any relevant third-parties. Thereafter, if necessary, the Court will establish procedures for addressing any outstanding third-party concerns; and it is further

ORDERED that, in light of the foregoing, the California plaintiffs' motion to extend time is DENIED as moot; and it is further

ORDERED that in light of the Court's Order dated July 26, 2002, which extended the time for the MDL plaintiffs' reply to August 30, 2002, the motion of the MDL plaintiffs for an extension of time to file a reply is DENIED as moot.

SO ORDERED.

COLLEEN KOLLAR-KOTELLY
United States District Judge